

REMARKS

Claims 38-55 are all the claims pending in the application. Claim 38 is the only independent claim. Claims 38-45, 47 and 53-55 presently stand rejected.

Withdrawn Claims

Claims 46 and 48-52 are withdrawn from consideration as being drawn to a non-elected invention. Applicant respectfully requests the Examiner to rejoin these claims once a generic, linking claim is allowed.

Declaration

The Examiner has indicated that the Declaration is defective because the specification to which the declaration is directed has not been adequately identified. Further, the Examiner has indicated that Applicant has not given a post office address anywhere in the application papers as required by 37 C.F.R. § 1.33(a).

Applicant hereby submits a newly executed Declaration and Power of Attorney, which properly lists the application number of the instant application. Further, a complete mailing address is included for the signing inventor.

Claim Rejection Under 35 U.S.C. § 112

Claims 41-45 and 47 are rejected under 35 U.S.C. § 112, second paragraph.

With respect to these claims, Applicant has amended claim 41 to recite a single construction element. Moreover, claims 42 and 43, which depend from claim 41, have been amended so that they are consistent with claim 41.

In view of these amendments, Applicant respectfully requests the Examiner to withdraw this rejection.

Claim Rejections Under 35 U.S.C. § 102

Claims 38, 41, 44, 47 and 55 are rejected under 35 U.S.C. § 102(b) as being anticipated by Vigouroux (FR 1274506).

Claim 53 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Vigouroux in view of Hanner (US 2,821,426).

Claim 54 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Vigouroux in view of de Kroon et al. (EP 0155886).

Claims 38, 41, 44, 45, 47 and 55 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brooke (US 800,067) in view of Vigouroux.

Claims 39, 40, 42, 43 and 54 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brooke (US 800,067) in view of Vigouroux and further in view of de Kroon et al. (EP 0115886).

Claim 53 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Brooke (US 800,067) in view of Vigouroux and further in view of Hanner (2,821,426).

Claim 38

Applicant has amended independent claim 38 to recite, among other things:

at least one protuberance having a height and extending over the lower face thereof, the depth of said groove and the height of said protuberance *being approximately equal...*

the protuberance is *engaged into the groove ...*

the strip extends *outside the groove towards the lateral faces.*

With respect to claim 38, the examiner is of the opinion that the strip of Vigouroux is capable to enable an adjustment of height alignment, height and plumb of each of the plurality of construction elements. Applicant respectfully submits that the Examiner position is clearly based on hindsight.

Referring to FIG. 1 of Vigouroux, a substantial amount of binder is poured in the groove. This causes that, when two construction elements are superposed, there is still a large amount of binder between the bottom of the groove AA and the underside of the protuberances P. Such a large amount of binder can never enable an alignment or adjustment by itself, as due to the large amount the construction element can still float on the binder. Moreover, Vigouroux only refers to the binder as a means to bind both construction elements and in no way teaches other properties thereof than the well known binding function. Therefore, only the present disclosure could lead the examiner to find these features of the binder and the construction elements in Vigouroux.

Nevertheless, claim 38 has been amended. Amended claim 38 distinguishes over the previous claim 38 by the introduction of the groove “having a depth” and the protuberance “having a height”. It is further specified that “the depth of the groove and the height of the protuberance are approximately equal”. Support for the latter amendments is given by paragraph [0046] of the pre-grant published application. Claim 38 is further amended by the introduction of “the strip extends outside the groove towards the lateral faces”. Support for the latter can be found in figure 5 C and §0049. Finally the expression “penetrates partially” has been modified by “is engaged” which is supported by paragraph [0044] of the pre-grant publication.

The fact that the depth of the groove and the height of the protuberance of claim 38 are approximately equal also contributes to enable a correct adjustment of height alignment and plumb. As this leads to only a thin strip of binder, the relative position between the two superposed construction elements is precisely determined and thus causes a good height alignment and plumb.

Referring to FIG. 1 of Vigouroux, it will be clear that the depth of the groove AA is *substantially larger* than the height of the protuberance P. The feature that the depth of the groove and the height of the protuberance are approximately equal thus further distinguishes claim 38 over Vigouroux.

Referring again to FIG. 1 of Vigouroux, it can be seen that the binder (xx) does not extend outside the groove towards the lateral faces, which again forms a distinction over the amended claim 38. Moreover, Vigouroux even leads the skilled person away from a binder strip extending outside the groove towards the lateral faces. As is described on page 2 right column (lines 12-15) of Vigouroux, the binder is pushed into the part P' i.e. in the space between the wave shaped protuberances P. Moreover, in the last paragraph of the left column of page 2, there is mentioned that the construction element is arranged in such a manner as to completely isolate the binder from the outer side in order to avoid infiltration of humidity. So, starting from Vigouroux, the skilled person would not apply for a solution where the depth of the groove and the height of the protrusion are substantially equal. Indeed, the consequence of the latter choice is that after putting the binder in the groove of one construction element and placing another construction element above the first one, the penetration of the protrusion into the groove will cause the binder to be pushed outside the groove towards the lateral faces. As Vigouroux teaches

to avoid contact between binder and humidity, the skilled person will never, starting from Vigouroux, consider to reduce the volume of the groove in order to have the binder be pushed towards the lateral faces when building the wall. Consequently claim 38 is not only new in view of Vigouroux but also not obvious.

Moreover, even if Vigouroux teaches that the height of the ribs can be varied and is equal to the thickness of the desired horizontal binder strip, it does not mean that the amount of binder poured into the groove of Vigouroux takes into account the dimension of the protrusion. The amount of binder that is dosed in the groove of the construction element according to the present invention is calculated and dosed in function of the height of the protrusion. This is expressed in the amended claim 38 by stating that the protuberance is “engaged into” the groove, which is not the case in Vigouroux where the protuberances are simply put into the binder without being engaged into the groove. As Vigouroux teaches that the height of the ribs is equal to the binder's thickness, the protrusions could never engage into the grooves as this would lead to too much binder ejected. Therefore, the dosage of Vigouroux has nothing in common with the wall of claim 38.

Moreover, there is no reasonable combination of the applied references makes up for these deficiencies in Vigouroux.

For example, the Examiner acknowledges that Brooke fails to disclose the binder being applied in the groove such as to form a strip of binder, but asserts that it would have been obvious. However, the Examiner is misapprehending the disclosure in Brooke.

Brooke teaches in column 1, lines 9-19 is that the blocks according to his invention will be securely locked in position in the wall *regardless of the cement or other binding material*

employed. See Brook at page 1, lines 4-19. As this refers to the object of the invention, it can therefore not be derived that a binder is used. When moreover lines 55-61 of page of Brooke are considered, it is mentioned there that the blocks are securely locked by the tongues engaging into the groove without any reference to a binder. From this passage and in the light of the object stated in column 1, lines 4-19, it is clear that no binder is used in the groove 6 of Brooke.

Moreover, the combination of Brooke and Vigouroux would, contrary to the Examiner's argument, never be considered by the skilled person. Brooke teaches a secure locking by having the tongues 5 engaged into the grooves. Such a secure locking is not present in Vigouroux as the tongues engage in the binder and not in the groove. Vigouroux, as discussed above, does not teach an alignment in height and plumb by using the dimension of the groove and the protrusion, combination of Brooke and Vigouroux will not lead to the features of claim 38.

Even if the skilled person would start from Brooke and apply a binder in the groove, this would not enable a height and plumb adjustment. As according to Brooke, a secure locking is required between the tongue and the groove, the penetration of the tongue into the groove would cause that all the binder put into the groove is pushed out of the latter. Indeed, in order to obtain a secure locking between tongue and groove in Brooke, the dimension of the tongue and the groove must perfectly fit with each other and nearly no tolerances are permitted. So, if a binder is used in Brooke only a very thin layer is possible and the alignment is not obtained by this thin layer but by the precise dimensioning of the groove and the tongue.

The skilled person would thus never apply the teaching of Vigouroux to Brooke as both use substantially different solutions which are not compatible with each other. Starting from

Brooke, there would also never be a problem of alignment of height and plumb as the secure locking approach between tongue and groove does not lead to such a problem.

Finally, amended claim 38 recites that the strip extends outside the groove towards the lateral faces of the construction element. Since no strip of binder is taught by Brooke, this claim is not anticipated by Brooke nor obvious in view of the combination of Brooke and Vigouroux.

Thus, Applicant respectfully submits that claim 38 is patentable.

Other Claims

Applicant respectfully submits that dependent claims 39-45, 47 and 53-55 are patentable at least for the reasons discussed above with respect to claim 38.

Although claim 41 has been amended so that it is an independent claim, claim 41 includes the features of claim 38 that are discussed above.

Moreover, each of the other claims depends from claim 38 or claim 41 and, as such, should be patentable at least due to its dependency.

Moreover, with respect to claim 44, the Examiner observes that the depth of the groove and the height of the protuberance of Vigouroux would inherently be approximately equal and proportional to a tolerance. Applicant respectfully submits that this is based entirely on hindsight. FIG. 1 of Vigouroux clearly shows that the protuberances have a height which is half of the depth of the groove. Moreover, a dimensional relationship between the groove and the protuberance is not provided anywhere in the description of Vigouroux. What Vigouroux teaches (see page 2 left column lines 15-17) is that height of the protuberances A, B and C is variable and equal to the thickness of the desired horizontal joint. The fact that the height of the protuberances is variable and equal to the thickness of the desired horizontal joint clearly leads

the skilled person away from having the depth of the groove approximately equal to the height of the protuberance.

With respect to claim 55, Vigouroux, contrary to what is asserted by the Examiner, shows a thick and not a thin joint (see FIG. 1). The joint is substantial thicker than the protuberance and can therefore never be considered as thin. However, in order to distinguish claim 55 more clearly over Vigouroux, claim 55 has been amended to recite that the joint is thinner than the depth of the groove. Support for this amendment is found in FIG. 5C of the specification.

The examiner also rejects claim 53 as being unpatentable over Vigouroux in view of Hanner (US 2,821,426). Nevertheless and even if Hanner discloses a tool for carrying of blocks for ease of handling, Hanner does not teach that the lifting tool enables to align the height and the plumb of the construction element. In order to more clearly distinguish the subject matter of claim 53 over the prior art, the latter claim has been amended by introducing that the tool is configured as a mason's hammer. Support for this amendment is found on page 4 left column, line 3-6.

With respect to claims 49, 40, 42-43 and 54, even assuming *arguendo* that de Kroon teaches trapezoidal protrusions and groove, the combination of Brooke, Vigouroux and de Kroon does not lead to the cited claims for the reasons set out here before. Nevertheless the argument cited on page 12 of the Office Action that starting from Brooke the skilled person would leave a first space between the groove and the protuberance to allow clearance of the binder cannot be followed as Brooke teaches a secure locking. Any space between the tongue and the groove would adversely affect this secure locking.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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